

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA**

AMERICA FIRST LEGAL  
FOUNDATION,

Plaintiff-Appellant,

v.

USDA, *et al.*,

Defendants-Appellees.

No.: 23-5173

**PLAINTIFF-APPELLANT'S STATEMENT OF  
ISSUES TO BE RAISED**

1. Did the district court erroneously uphold the application of FOIA Exemption 5, presidential communications privilege, to the agency records at issue in this case?
2. Did the district court erroneously defer to the Special Counsel?
3. May the presidential communications privilege be applied retroactively to a record reporting final agency actions and agency plans to the White House?

Dated: August 28, 2023

Respectfully submitted,

/s/ Michael Ding

Reed D. Rubinstein

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Michael Ding

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Plaintiff-Appellant's Statement of Issue to be Raised was served on all counsel of record through the Court's ECF system on August 28, 2023. DOJ Appellate Counsel has not yet been assigned for the Defendants-Appellees.

/s/ Michael Ding